IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6154 of 2002

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JIVABHAI DEVJIBHAI CHAUHAN

Versus

REGIONAL MANAGER

Appearance:

MR NIRAL R MEHTA for Petitioner No. 1

RULE SERVED for Respondent No. 1,4

MR AS VAKIL for Respondent No. 2

MR SAMIR J DAVE for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 10/09/2004

CAV JUDGEMENT

1.0 By way of this petition the petitioner has challenged the order passed by the respondent no.3 below Exh.C dated 11.1.2002 whereby the Central Government has declined to refer the dispute on the ground that the disputant has failed to produce any supporting documents

in support of his claim that he has worked for more than 240 days continuously in a calender year and that the disputant was appointed as a temporary Peon for different periods at Pansina Branch of the Bank during the absence of permanent staff of the Bank.

2.0 The petitioner was working as Peon with State Bank of Saurashtra at Pansina Branch since 1984 for different periods and mainly 20.6.1998 to 20.7.2000 and service of the petitioner has been terminated without any due process of law. The petitioner has raised an industrial dispute by making an application to the Assistant Labour Commissioner (C), Adipur,Kutch and the conciliation proceeding was initiated. Ultimately the petitioner received a communication dated 11.1.2002 passed by respondent no.3 refusing to make reference to the Industrial Court as stated above which led to filing of the present petition.

3.0 Mr. N.R. Mehta, learned Advocate for the petitioner submitted that the impugned order is illegal and unlawful and the respondent authority has no power or authority to go into the merits of the demand raised by the petitioner and to refuse to refer the dispute for adjudication. He contended that the appropriate Government only has to consider whether an industrial dispute exists or is apprehended and whether the same is required to be referred to adjudication to the appropriate Industrial Tribunal or Labour Court. According to the petitioner, the respondent has exceeded its jurisdiction and entered into the question of merits and demerits of the demand and has thereby committed a gross illegality.

4.0 Mr. A.S. Vakil for the respondent submitted that the petitioner has not produced any material on record in support of his contention that the petitioner had worked for the period claimed by him continuously nor has he produced any evidence even to prima facie come to the conclusion that he had worked for 240 days during the relevant period i.e. 12 calendar months prior to the date of termination. He submitted that the respondent has worked for an aggregate period of 58 days for the period 1986-87. According to him the petitioner had worked purely as a casual labour on daily wages.

4.1 Mr. A.S. Vakil has relied upon various decisions of the Supreme Court in the case of Bombay Union of Journalists Vs. State of Bombay, reported in AIR 1964 SC 1617, and in the case of Prem Kakar Vs. State of Haryana, reported in (1976)3 SCC 433.

5.0 Learned counsel for the petitioner has relied upon a decision of this Court in the case of Special Civil Application No.7481/2004 dated 31st August 2004 wherein this Court has considered in detail the similar question raised in this petition. In the said decision this Court has also dealt with various decisions of the Supreme Court and considered the scope of the powers of the appropriate Government under section 10(1) read with section 12(5) of the Industrial Dispute Act. In the said decision in para 12 this Court has held as under:

> "....In conclusion, I find that the respondent no.1 had exceeded its jurisdiction and exercised powers not vested in it. The question whether the petitioner had actually worked for 240 days during the relevant period or not, in the facts of the present case, was required to be decided by the appropriate Industrial Tribunal or the Labour Court and it was not open for the respondent no.1 to come to conclusion for which there was no material on record.Even if the respondent no.1 has not taken into account any irrelevant or extraneous material, in view of the fact that there was no material whatsoever to enable the respondent no.1 to come to the conclusion that the petitioner had not worked for 240 days during the relevant period, I find that this is a fit case in which this Court should interfere with the order of the respondent no.1 and issue appropriate writ directing the respondent no.1 to reconsider the decision in light of the observations made in this order."

6.0 In the above decision all the judgements on the point have been considered by the learned Single Judge.

7.0 Learned counsel for the petitioner is unable to point out that the said ratio is not applicable to the facts of the present case.

8.0 In a similar case in Special Civil Application No.5032 of 2003 this Court vide order dated 8th July 2004 set aside the decision of the Competent Authority and directed to reconsider the matter.

9.0 In the premises aforesaid, the present petition is allowed. The impugned order dated dated 11.1.2002 passed by the respondent no.3 is set aside and the respondent authority is directed to reconsider the question of necessity to refer the industrial dispute

raised by the petitioner to the appropriate Labour Court/Industrial Tribunal for adjudication in light of the observations made hereinabove. Such exercise may be concluded within a period of eight weeks from the date of receipt of a copy of this order. It will be open for both the parties to produce further materials in support of their contentions before the appropriate Government.Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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